United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

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No. H-74-111

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P/S

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

In the Matter of Leonard Crisp,
Bankrupt

STATE OF CONNECTICUT,
COMMISSIONER OF FINANCE AND CONTROL,
Plaintiff-Appellant

v.

LEONARD CRISP,
Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

BRIEF OF DEFENDANT-APPELLEE

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2

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TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes:

Federal Statutes:

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On Appeal From the United States District Court For The
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BRIEF OF DEFENDANT -APPELLEE

Statement of Issues

1. Where the State of Connecticut claimed that a debt owed to a sovereign State takes privileged status under the bankruptcy laws, did the courts below properly find that a State as a creditor is bound by Article One Section Eight and the Supremacy Clause of the United States Constitution?

2. Where a discharge in bankruptcy of a debt owed to a State is a form of prospective relief, did the courts below properly find that

the discharge of such a debt is not a violation of the Eleventh Amendment?

3. Where a patient in a state-supported hospital was billed according to his ability to pay, did the courts below properly find that the hospitalization debt was dischargeable under §63 of the Bankruptcy Act?

4. Where the State of Connecticut filed a proof of claim in a fixed amount, did the courts below properly find that the State could not subsequently claim the debt owed it was too contingent to be estimable and dischargeable under §63 of the Bankruptcy Act?

5. Where the Constitution requires that the laws of bankruptcy be applied in a uniform manner, in accordance with principles of equity, did the courts below properly discharge Leonard Crisp's hospitalization debt which he had owed to the State of Connecticut?

Statement of the Case

On March 8, 1974, Leonard Crisp filed a voluntary petition in the Bankruptcy Court seeking a discharge of his scheduled debts. Among Crisp's scheduled debts was a claim for $1623.65 owing to the State of Connecticut for care received by him at Norwich State Hospital, a state supported hospital for psychiatric care. On April 17, 1974, the State filed a Proof of Claim in that amount.

On June 4, 1974, Leonard Crisp was discharged in bankruptcy by Judge Seidman. On June 5 Leonard Crisp received notification from the Bankruptcy Court of an objection by the State of Connecticut to the discharge of his hospitalization debt. In response to the State's objection filed May 21, 1974, counsel for Crisp filed a Motion to Dismiss for failure to state a claim cognizable under the Bankruptcy Act. On July 15, 1974, counsel for the State entered a general appearance in this matter. On July 18, 1974, Judge Seidman heard oral argument on the State's objections to discharge and Crisp's Motion to Dismiss.

On the morning of the hearing the State filed a brief enunciating a claim that the Norwich State Hospital debt was contingent and therefore not provable in bankruptcy. Arguments were heard on this claim, and Judge Seidman ordered briefs on the newly articulated objections to discharge by the State.

In its reply brief of August 9, 1974, the State of Connecticut for the first time made an objection to the personal jurisdiction of the Bankruptcy Court, basing its claim upon the Eleventh Amendment. On August 15, 1974, Judge Seidman issued a Memorandum of Decision finding the hospitalization debt of the bankrupt Leonard Crisp to be provable and dischargeable in bankruptcy. The State of Connecticut appealed the decision of the Bankruptcy

Court, and on November 18 a hearing, with additional testimony presented by the State, was held before District Judge T. Emmet Clarie. On November 21 Judge Clarie denied the State's appeal and affirmed the decision below.

It is from the decision of the District Court that the State now appeals.

I. THE SUPREMACY CLAUSE OF THE FEDERAL CONSTITUTION REQUIRES THE STATE OF CONNECTICUT TO CONFORM ITS LAWS TO THE FEDERAL BANKRUPTCY ACT.

A. Introduction

A common thread running through all of the State's arguments is that the State of Connecticut has a privileged status under federal laws of bankruptcy; and further, that Connecticut's statutory scheme for billing patients in state-supported psychiatric facilities can be construed as falling outside the purview of the Federal Bankruptcy Act. The State's contentions are insupportable under the Supremacy Clause and completely at odds with the philosophy underlying the Bankruptcy Act.

The United States Constitution expressly provides that Congress shall have the power "to establish . . . uniform laws on the subject of Bankruptcies throughout the United States." Article 1, §8. Only those claims specified by Congress are dischargeable in bankruptcy, and conversely, no exceptions to congressional specifications may be added to the Bankruptcy Act by a State. "It is fundamental that a claim is provable in bankruptcy only if Congress has so provided." Matter of Shawseen Dairy, Inc., 47 F.Supp. 494 (D. Mass. 1942).

The power of Congress to legislate upon the subject of bankruptcy is supreme. U.S. Constitution Article 6. Congress may exercise its bankruptcy power to exclude every competing or conflicting proceeding in state or federal court. Marine Harbor Properties v. Manufacturers Trust Co., 317 U.S. 78, 89 L.Ed. 64, 63 S.Ct. 93 (1972). Bankruptcy is a paramount national function which takes precedence over conflicting provisions of the constitution or laws of any state. Commonwealth of Massachusetts v. Charles Barlett, 266

F. Supp. 390 (D. Mass. 1967). A state may not pass or enforce additional or auxiliary regulations to the federal Bankruptcy Act. International Shoe Co. v. Pinkus, 278 U.S. 261, 73 L.Ed. 318, 49 S.Ct. 108 (1928).

Construction of the Bankruptcy Act is a federal question. Board of Trade v. Johnson, 264 U.S. 1, 68 L.Ed. 300, 68 L.Ed. 284, 27 S.Ct. 137 (1923); Wragg v. Federal Land Bank, 317 U.S. 325, 87 L.Ed. 300, 63 S.Ct. 273 (1943).

B. The Constitutionality Of The Bankruptcy Act Is No Longer Debatable.

The congressional power to legislate on the subject of bankruptcies includes the power to impair the obligations of contracts. Bachman v. McCluer, 63 F.2d 580 (8th Cir. 1933). It has been said that Article 1, §8 must be read into all contracts as constituting a part thereof.[1] Wright v. Union Cent. L. Ins. Co., 304 U.S. 502, 82 L.Ed. 1490, 58 S.Ct. (1937).

Constitutional attacks on the bankruptcy laws based on a claim that the Fifth Amendment bars any impairment of the right to contract have not been sustained. Hanover National Bank v. Moyses, 186 U.S. 181 (1902). The state power of eminent domain is subject to the Supremacy Clause, and cannot to be exercised in a manner which would impede the purposes of bankruptcy. Commonwealth of Massachusetts v. Barlett, supra. Alteration under the federal

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[1] In as much as the concept of bankruptcy runs counter to our most fundamental principles of contract obligation, it has been said that "any satisfactory discussion of bankruptcy must proceed on the premise that bankruptcy is a distinct system of jurisprudence." 9 Am. Jur. 2d at p. 43. For a detailed discussion of the philosophic underpinnings of bankruptcy law, see Philip Shuchman, "An Attempt at a 'Philosophy of Bankruptcy'", 21 UCLA LR (Dec. 1973) at 403.

bankruptcy power of rights created or protected by States is not in violation of the Tenth Amendment. Wright v. Union Cent. L. Ins., supra. Congress may authorize the bankruptcy court to affect property rights protected by state laws, provided the limitations of due process are observed. Id.

C. States Have No Special Status As Creditors In Bankruptcy.

A state may not construe its own laws so as to render an otherwise dischargeable debt not allowable in bankruptcy. Matter of Ten Eyck, Inc., 40 F.Supp. 270 (N.D.N.Y. 1941) aff'd 126 F.2d 806; Perez v. Campbell, 402 U.S. 637, 29 L.Ed. 2d 233, 91 S.Ct. 1704 (1971); In re Williams, U.S. Dist. Ct., D.Wash., No. 917-72B2 (Nov. 9, 1972), cited in CCH Bankruptcy Rpts. ¶64, 952 (1973). Furthermore, the constitutional requirement of uniformity prevents Congress from legislating and the courts from construing bankruptcy in such a way as to make a discharge in bankruptcy mean one thing in one state and something different in another state. Perez v. Campbell, supra.

The question in bankruptcy of whether a debt owed to a State is on an equal footing with debts owed to private persons has been long settled. The resolution of the matter may be summarized as follows:

> Prior to the Act of 1898, it was held that all debts due to the United States and to the States although not specifically excepted were not dischargeable. But by virtue of the express change of the purpose of the Act of 1898, with reference to debts due to the United States or a state or subdivision thereof, such obligations are not dischargeable. (Citing McPhee v. United States, 64 Colo. 421, 174 Pac. 808 (1918), Guarantee Title and Trust Co. v. Title Guarantee and S. Co., 224 U.S. 152, 32 S.Ct. 457, 56 L.Ed. 706. 1A Collier §17.13.

Only those classes of obligations enumerated under §17 of the Bankruptcy Act may be exempted from discharge in bankruptcy. Those obligations not enumerated under §17, provided they meet other criteria of provability, are all dischargeable. "This Act takes into consideration, we think, the whole range of indebtedness of the bankrupt -- national, State, and individual -- and assigns the order of payment" Guarantee Title and Trust Co. v. Title Guarantee and S.Co., supra (emphasis added).

Although alimony payments are exempted from dischargeability under §17, payments owed to a state welfare department, which go toward the support of the bankrupt's former spouse, are dischargeable:

> [T]he general purpose [of §17] being to discharge a debtor from the burden of debt so that he may function in society free of the oppressive and demoralizing procedures and pressures attendant to the collection of debt. The state has attempted to invest itself with the character and quality of the children's relationship to the bankrupt by statutory fiat ... The State cannot bar or deflect dischargeability by virtue of its own statutes. The debt owing by the debtor to the State, on account of the State statute, is dischargeable.
>
> In Re Williams, supra.[2] (emphasis added)

In McPhee, supra, the court looked to the explicit language of the Bankruptcy Act and concluded that:

> if it [Congress] intended that other debts due to the United States should be excepted, it would have so declared. The omission of any exception of such debts is significant. The insertion of the provision with respect to taxes, without a like provision in regard

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[2] Recent amendments to the Social Security Act P.L. 73-647, §456(b) (43 LW 159) to take effect July 1, 1975, may limit the holding of Williams, supra, only as to the dischargeability of child support obligations assigned to the States. We note, however, that no court has yet faced the question of whether 456(b) conflicts with § 17 of the Bankruptcy Act.

> to ordinary debts due to the United States, must be attributed to some purpose on the part of the law making body. The purpose in view, we think, was that a bankrupt should be discharged from provable debts, to whomsoever so owed, except as specified. (emphasis added). at 813.

No provision in §17 or any other section of the Bankruptcy Act provides for special treatment of a debt owed to a State. The case law runs consistently counter to any such assertion. Hilliard v. Ceucis, 115 NYS 2d 5 (1952); In re Williams, supra; Perez v. Campbell, supra.

In Perez the Supreme Court posits a two-tier test to determine whether an Arizona statute which excludes debts incurred under the State's Financial Responsibility Law from discharge in bankruptcy is in conflict with federal law and hence invalid under the Supremacy Clause. C.G.S. §17-295 on its face suggests no interference with the Bankruptcy Act, but the case of State v. Murzyn, 142 Conn. 229 (1955), which is relied upon by the State of Connecticut, interprets Connecticut law so as to conflict with the purpose of the Bankruptcy Act. Judge Seidman in the Court below found Murzyn to no longer accurately reflect Connecticut law. (See Section III B, infra; and Judge Seidman's Memorandum and Order, August 15, 1974). In any case, there can be no doubt that Murzyn's holding conflicts with the Bankruptcy Act's primary purpose of rehabilitating the debtor. Perez, at 675. The Perez Court reaffirms Chief Justice Marshall's holding in Gibbons v. Ogden, 6 L.Ed. 23, 9 Wheat. 1, (1824), and strikes down Arizona's statute as "inconsistent with the controlling principle that any state legislation which frustrates the full effectiveness of federal law is rendered invalid by the Supremacy Clause." Perez, at 678.

The State of Connecticut here asserts that a debt founded upon care provided the bankrupt-appellee Leonard Crisp in a state-supported psychiatric facility may not be discharged without the "permission of the sovereign State of Connec-

ticut." The State of Connecticut is bound by the Supremacy Clause of the United States Constitution. In view of Article 1, §8 and Article 6, Cl. 2 of the Constitution, the claim of the State of Connecticut cannot be sustained.

II. THE ELEVENTH AMENDMENT IS NOT A BAR TO DISCHARGE OF THE APPELLEE'S DEBT TO THE STATE OF CONNECTICUT.

A. The Eleventh Amendment Does Not Bar The Granting Of Prospective Relief To A Debtor In Bankruptcy.

The State of Connecticut argues that the Eleventh Amendment protects it from suit in Bankruptcy Court without its permission. This argument fails to appreciate the nature of a proceeding in bankruptcy, and also reflects a misunderstanding of the applicable scope or the Eleventh Amendment. Both the Referee in Bankruptcy and the District Court below considered the State's Eleventh Amendment arguments irrelevant to the facts of this case. The Eleventh Amendment is not a broad crutch to be used by States in proceedings which only peripherally affect their interests. Bank of the United States v. Planters' Bank, 9 Wheat 904 (1824); Hans v. Louisiana, 134 US 1 (1890). The State claim of protection under the Eleventh Amendment is inappropriate to the instant case.

Appellant fails to recognize that a proceeding in bankruptcy is a proceeding in rem, in which the res is the assets of the bankrupt, and not the assets of a creditor. Local Loan Co. v. Hunt, 292 US 234. The Notice to Creditors sent out by the Bankruptcy Court to the appellant does not constitute a legal requirement to appear before the Court, as would service of process. 9 Am Jur 2d §75. The summary jurisdiction of the bankruptcy court may be conferred only by consent of a creditor. Katchen v. Landy, 382 US 323 (1966); In Re Cleveland v. Sandusky Brewing Co., 11 F Supp 198 (D.C. Ohio 1935).

The Eleventh Amendment provides that no "suit in law or equity" may be "commenced or prosecuted against one of the United States." In no sense is a proceeding in bankruptcy, in which a State is merely one of

several creditors, a suit "against" a State.

The Eleventh Amendment is not a bar to actions undertaken against a State by the federal government. Monaco v. Mississippi, 292 US at 329, United States v. Wyoming, 331 US 440 (1947). The trustee or receiver in bankruptcy acts as an officer of the court, his function being to administer property in the custody of the Bankruptcy Court. Pearson v. Higgins, 34 F2d 27, cert denied 280 US 593, 74 Led 641, 50 Sct 39 (1929); Imperial Assurance Co. v. Livingston, 49 F2d 745, Bankruptcy Act §1 (22). Where the trustee undertakes litigation for the bankrupt's estate it is at the behest of the bankruptcy court, and it is doubtful that the Eleventh Amendment would then afford a State as creditor protection under the Monaco rationale. Inasmuch, however, as the appellant State itself has, in this instance, affirmatively entered the Bankruptcy Court to contest a claim, the Court need not here reach this question.

Appellant State of Connecticut relies upon Edelman v. Jordan, 415 US 651, 94 S Ct 1347, 39 L. Ed. 2d 577 (1974) in support of its Eleventh Amendment claims. The distinction between the instant proceeding and Edelman is clear, and the appellant is mistaken to rely upon Edelman. The sole question presented in Edelman is whether a federal court may impose retroactive monetary liability upon a State. Justice Rehnquist carefully distinguishes Edelman from Ex Parte Young, 209 US 123, 28 Sct 441, 52 Led 714 (1908), on the basis that Young authorizes only prospective relief. While the Court concedes in Edelman that the relief ordered in Young "was not totally without effect on state revenues", it finds that the fiscal consequences to state treasuries in Young "were the necessary result of compliance with decrees which by their terms were prospective in nature". Edelman at pg. 667.

The effect of a discharge in bankruptcy is clearly "prospective in nature." A discharge in bankruptcy does not extinguish a debt, but instead offers the debtor a legal defense to any future action on the debt, analagous to the defense of the running of the statute of limitations. 8B C.J.S. §559, p. 19; Helms v. Holmes, 129 F2d 263 (1942).

Unlike the situation before the Court in Edelman,[3] no invasion of the state's coffers was here contemplated by the Bankruptcy Court; discharge of appellee's debt to the State has left appellant in the same financial position as it was in prior to the discharge. Civil action on the debt remains open to it and the choice of whether or not to raise discharge as a defense remains open to the bankrupt. 8B CJS Sec. 559.

Edelman v. Jordan has no bearing upon the present case. It is concerned only with retroactive damages, while the remedy of discharge in bankruptcy affords only prospective relief to the debtor, and prospective estoppel to the creditor.

B. The Appellant Has Voluntarily Sought Out The Jurisdiction And Determination Of The Bankruptcy Court, And Has Therefore Waived Its Objections To Jurisdiction.

The Eleventh Amendment is a bar against suits by private persons against States, but it does not affect a State's affirmative right to sue. By responding to the Notice to Creditors and filing its Proof of Claim, the State voluntarily submitted itself to the jurisdiction of the Bankruptcy Court.

The filing of a general appearance and the filing of a Proof of Claim each constitute acceptances by the appellant State of the Bankruptcy Court's

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[3]Note that when the states were pressing for the passage of the Eleventh Amendment, no criticism was raised against the extent of the bankruptcy power. As a matter of constitutional construction, the precedence in time taken by Art 1 §8 must be considered, and the Constitution must be read as a consistent whole. Congressional and judicial expansion of the bankruptcy power is analagous to the expansion of our view of the Commerce Clause cf. 9 Am Jur. 2d. The applicability of Ex Parte Young to the instant case thus becomes especially compelling from a historical perspective.

jurisdiction. While the Court in Edelman asserts that the Eleventh Amendment may be raised at any time as a jurisdictional defense, it certainly did not intend that when a State affirmatively sues and finds itself losing its case, it may raise the Eleventh Amendment, for example, to a counterclaim, and thus evade liability. Clark v. Barnard, 108 US 436 (1883); Parden v. Terminal Ry., 377 US 184 (1964).

The Supreme Court has recently held that filing of a Proof of Claim is sufficient to submit a creditor's assets to the jurisdiction of the Bankruptcy Court. Katchen v. Landy, 382 U.S. 323 (1966). The options of timely objection or refusal to appear are open to any creditor notified of a bankruptcy proceeding. Cf. Bankruptcy Act §2(a)(7) (11 U.S.C. §11(a)(7)).

When a creditor objects to discharge of a debt, it is in effect affirmatively coming into court and asking that the bankruptcy judge adjudge the validity and dischargeability of his claim. Cf. 9 Am. Jur. 2d §75. Such affirmative suit by a State was never protected by the Eleventh Amendment.

III. APPELLEE'S OBLIGATION TO THE STATE OF CONNECTICUT FOR THE COST OF PSYCHIATRIC CARE IS PROVABLE AND DISCHARGEABLE IN BANKRUPTCY.

A. Contingent Debts Are Dischargeable In Bankruptcy.

Section 63 of the Bankruptcy Act states that only debts which are provable are allowed in bankruptcy. The State in its brief asserts that only "a fixed debt . . . absolutely owing" is dischargeable under this section. A more patient reading reveals that nine categories of debt are enumerated as provable under §63, of which a fixed liability absolutely owing is but one.

The State asserts that because Mr. Crisp's obligation to the State is a contingent one, it is not dischargeable under §63, but §63a(8) explicitly states that "contingent debts and contingent liabilities" are provable and allowable. Denton and Anderson Co. v. Induction Heating Corp., 178 F. 2d 841 (2d Cir. 1949); Saint Paul-Mercury Indemnity Co. of Saint Paul v. Dale, 15 N.W. 2d 577 (S.D. 1944).

Section 63a(4) is an alternative or reinforcing claim for provability under the Bankruptcy Act for the debt here in dispute. This subsection states debts founded upon "an open account, or a contract express or implied," are provable and allowable in bankruptcy. This description clearly fits the nature of Crisp's debt to the State. C.G.S. §17-295(g) imposes upon the commissioner's powers of collection "the limitation of action provided in section 52-576." C.G.S. § 52-576 is entitled "actions for account or on simple or implied contracts," and sets forth the statute of limitations for recovery on such debts. Obligations arising under state laws, other than taxes, have been held to be implied contracts within the meaning of §63a(4). 3A Collier, pp. 1889-1891.

The mutual applicability of §63a(4) and §63a(8) to a variety of claims results from the patchwork history of American bankruptcy law. Prior to the addition of subsection (8) to §63a in 1938, it was often held that contingent claims were allowable under the heading of subsection (4).[4] "The Supreme Court, in an attempt to further the bankrupt's rehabilitation, step by step liberalized the construction of §63a(4) until it excluded only those claims that from practical viewpoint might be said to be 'too contingent'"3A Collier, at 1883.

Although this overlap between the two subsections has resulted in some theoretical confusion, it indisputably serves to amplify the provability of liabilities falling under §63a(4), and renders "obsolete the precedents that formerly denied provability to a contractual claim on the sole ground that it was contingent." 3A Collier, id.

An example of a case which relies equally on both §63a(4) and §63a(8) to find a claim provable and dischargeable is In Re Maki, D. Mich. Sept. 13, 1972, No. M. 2872B2, reported in CCH Poverty Law Reporter, May 1973, at p. 25. Maki's driver's license and registration had been suspended because the State Accident Claims Fund had paid out funds to an accident victim but had not been reimbursed by Maki, the driver. Michigan argued that because the claim was not yet in suit, it was not dischargeable under §63a(4) and also under §63 a(8). Noting that one of the primary purposes of the

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[4]Both federal cases cited by appellant in its brief, In re Dixie Splint Coal Co., 308 U.S. 295, 60 SCt 238 (1938) and Matter of Long and Smith, 95 F2d 525 (2d Cir 1938) were decided before the addition of §63a(8) to the Bankruptcy Act; their rulings are irrelevant as to the provability of the instant claim.

Bankruptcy Act is to give debtors "a new opportunity in life and a clear field for future effort", the referee observed with some irony that following the state's argument "would result in a situation in which the less the Secretary [of State] does to pursue his claim, the more secure the claim is" — a characterization which applies equally well to the claim of the State of Connecticut in the instant case.

Whether the obligation of the bankrupt to the State of Connecticut is characterized as a contingent obligation, as the State here would have it, or as an obligation founded on an open account, as suggested by C.G.S. §17-295(g) read in conjunction with C.G.S. § 52-576, it is clearly a provable obligation within the plain meaning of §63 of the Bankruptcy Act, and therefore dischargeable.

The only qualification upon §63a(8) is found in §57d of the Bankruptcy Act, which states that "an unliquidated or contingent claim shall not be allowed ... if the court shall determine that it is not capable of liquidation or of reasonable estimation, or that such liquidation or estimation would unduly delay the administration of the estate or any proceeding under this Act." Only "insurmountable technical difficulties of liquidation ... will now take a contingent claim out of the category of provable claims." 3A Collier at 1884. No such difficulties arise in the present case. The rule followed in liquidating a debt under §57d is the value of the goods or services provided the bankrupt. 9 Am. Jur. 2d §468. The value of the goods or services provided Mr. Crisp by the State of Connecticut is the total per capita cost of his stay(s) at Norwich Hospital, less any amount

he may already have paid the State toward the costs of his care. This is a debt which is eminently well-suited to fair liquidation.

The State of Connecticut puts great emphasis in its brief on the case of State v. Murzyn, 142 Conn. 229 (1955). Appellant suggests that this case determines the provability of §17-295 C.G.S. debts to the State. Upon somewhat closer scrutiny, however, it becomes clear that the Murzyn decision cannot bind this Court. The rule is firm that courts of bankruptcy are not required to follow state rules as to which claims are allowable in bankruptcy. The equities are to be resolved in favor of federal, not state law. 9 Am. Jur. 2d §431.

Moreover, the Connecticut Court in Murzyn based its ruling solely on the inapplicability of Murzyn's liability to the provisions of §63a(1). While it was correct to find that appellant's liability was not "fixed ... absolutely owing", and was instead a contingent liability, it strangely made no reference, even in passing, to the provisions of §§63a(4) and 63a(8), which clearly made Murzyn's obligation provable. Why the Connecticut Court did not study this aspect of the appellant's claim may remain obscure to us, but whatever the reason for the Court's decision, it is clearly in error and must be disregarded by this Court. As the Supreme Court stated in Local Loan:

> The contention is that even if the general rule be otherwise, this court is bound to follow the Illinois decisions, since the question of the existence of a lien depends upon Illinois law. We find it unnecessary to consider whether this contention would in a different case find support ... since we are of the opinion that it is precluded here by the clear and unmistakeable policy of the bankruptcy act. It is important to bear in mind that the present case is not one within the jurisdiction of a state court, but is a dependent suit brought to vindicate decreees of federal court of bankruptcy entered in the exercise

> of a jurisdiction essentially federal and exclusive in character.
>
> at 244 (emphasis added).

b. The State By Filing A Fixed Proof of Claim Has Refuted Its Own Contention That the Debt Is For A Sum Uncertain.

Connecticut's statutes provide for the billing of patients in state-supported humane institutions at rates based upon the patients' abilities to pay. Judge Seidman pointed out in his opinion below that the Murzyn decision rested upon a no longer applicable statutory scheme. Murzyn was based upon an interpretation of §§1142c and 1147c of the 1953 Cumulative Supplement of Connecticut General Statutes, which were repealed and replaced in 1959 by the present §17-295. Section 1142c provided that " neither the billing nor the receipt of the per capita costs shall bar the Commissioner from recovery ... [of] the balance of the per capita cost remaining on such part thereof as such person ... is able to pay...", and Section 1147c provided that the State could recover "for the balance of the per capita cost remaining unpaid or such portion thereof as the court finds to be reasonably commensurate with the financial ability of such defendant ..." In short, the patient under §§1142c and 1147c remained liable for the difference between his billing and per capita cost.

The law under which Leonard Crisp was liable as a patient is §17-295 C.G.S., under which the patient is no longer liable for the difference between his billing and the per capita cost. Section 17-295(c), C.G.S., provides in pertinent part: "Each patient shall be legally liable from the date of admission for the support of such patient ... in accordance with his ability to pay..." And §17-295(g), C.G.S., provides that "The receipt of a lesser rate than the billed charges shall not bar the Commissioner from recovering from a liable person ... the balance of the

charges billed such person ... remaining unpaid ..." (emphasis added). These sections clearly authorize the State to recover only the unpaid balance of the billed charges. In contrast, the statutes in effect at the time Murzyn was decided permitted recovery up to the full per capita costs. The State places heavy reliance upon §17-295(b), which authorizes the State to recover up to the balance of per capita costs in the event that the patient comes into property after having been billed according to §17-295(c). Filing bankruptcy hardly qualifies as coming into property; for the State to argue that the filing of bankruptcy makes a man richer is to repudiate the entire philosophic foundation upon which our bankruptcy laws rest.

Even if we assume arguendo that the patient may be liable for the full per capita cost, his obligation remains provable under the Bankruptcy Act. The per capita cost provides a convenient ceiling for Crisp's obligation to the State.[5]

It is ironic that at this juncture the State argues that Crisp's obligation is too flexible to be provable. On April 17, 1974, the State filed a Proof of Claim for $1623.65. As late as June 20, 1974, the Connecticut Department of Finance and Control sent correspondence to Crisp demanding payment on his "account" and stating that his balance unpaid was $1623.65. In fact, in its initial Objection to Discharge the State actually requested a judgment for $1623.65.

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5. Indeed, taking cognizance of the State's position regarding the upper — although never billed — limit of the debt, Attorney for Crisp filed a Motion for Leave to Amend Schedule of Bankrupt in August 1974 prior to the rendering of judgement of discharge by Bankruptcy Judge Seidman. Said motion, which sought amending the debt to the State from $1623.65 to $12,000, was never ruled upon by the Bankruptcy Judge. Permission to amend the schedule to reflect the full per capita cost claim of the State would nullify the State's contentions as to the alleged contingency of the debt.

On the one hand the State argues that Leonard Crisp's obligation to pay for hospitalization care is too contingent to be provable. On the other hand, the State deals with the unpaid balance on account as a sum certain debt. Under Sections 63a(4) and 63a(8) of the Bankruptcy Act, it is not necessary that the obligation be a sum certain, but the State's insistence on an obligation of $1623.65 adds considerable weight to the argument that the hospitalization debt is at least estimable for the purpose of liquidation.

The State acknowledged that a clear upper limit exists as to its claim against Crisp. (Joint Appendix p. 55) A debt which is maximally assessable is not a contingent debt.

C. A Contingent Debt Which Can Be Characterized As A Prospective Lien Is Dischargeable Under §67 Of The Bankruptcy Act.

An alternative view of Crisp's obligation to the State is that it is a debt contingent upon the future earning potential of the debtor, and hence a lien within the meaning of §67 of the Bankruptcy Act. In Local Loan Co. v. Hunt, 292 U.S. 234 (1934), the Supreme Court found that a future contingent liability was indeed subject to present adjudication in bankruptcy. The problem there was in many respects the same as that which confronts us here, namely, whether future liabilities are dischargeable in bankruptcy even though the contingency upon which payment depends, future income, has not yet come into existence. In ruling against the creditor the Court cited with approval from the opinion in In re West, 128 Fed. 205:

> The discharge in bankruptcy operated to discharge these obligations as of the date of the adjudication, so that the obligations were discharged before the wages intended as security were in existence. The law does not continue an obligation in order that there may be a lien, but only

> does so when there is one. The effect of the discharge upon the prospective liens was the same as though the debts had been paid before the assigned wages were earned. The wages earned after adjudication became the property of the bankrupt clear of all creditors.
>
> at 206 (emphasis added).

The Court in Local Loan goes on to state that, in view of the rehabilitative purposes of the bankruptcy laws, it "logically cannot be supposed that the Act nevertheless intended to keep such debts alive for the purpose of permitting the creating of an enforceable lien upon a subject not existent when the bankruptcy became effective." Id. at 243. As in Local Loan, we have before us a case where the amount of the debt is clear, and the debt is clearly owed; to permit the debt to go undischarged would in effect simply continue the lien against the bankrupt which is created by C.G.S. §17-295.

D. The State Cannot Bill A Patient At One Rate And Subsequently Without Notice Bill Him Again At A Higher Rate, For To Do So Would Be To Make Its Contract Unenforceable Under Well-Established Principles of Equity And Unconscionability.

The bankruptcy court's broad equitable powers permit it to disallow claims which violate equitable principles. 9 Am. Jur. 2d §431; also, see Pepper v. Litton, 308 U.S. 295, 60 S.Ct. 238 (1939). The contract upon which the State of Connecticut rests its claim is a contract of adhesion, and therefore unconscionable under C.G.S. §42a-2-302 of the Connecticut Commercial Code. For examples of when contracts or claims have been voided on the basis of such equitable principles, see Williams v. Walker Thomas Furniture Co., 121 U.S. App. D.C. 315, 350 F. 2d 445, 18 A.L.R. 3d 1297 (D.C. Cir. 1965); Henningson v. Bloomfield Motors, Inc., 32 N.J. 358, 161 A.2d 69 (1960); and on Due Process rather than unconscionability grounds, In the Matter of

Calvin and Mary Priscilla Williams, D.C. Conn. February 21, 1974, No. H-11-814.

Admission to a state mental health facility by definition occurs under conditions of duress. Whether the commitment is voluntary or involuntary, the mental and the economic condition of the patient on admission is not one which permits him to shop around for the best available care, to consider quietly his alternatives, or to wrangle over contract terms. So the contract between hospital and patient is one based on positions of highly unequal bargaining power, and as such, is a classic contract of adhesion.

Of course, there is nothing unfair about billing of a patient for the costs of his care. The iniquity lies, not in charging the patient for his care, but for failing to disclose the true costs of that care to the patient. Take the example of the bankrupt Leonard Crisp, a literate, intelligent man. He was, over a period of several admissions to Norwich Hospital, always under the definite impression that the amount he owed to the State was determined solely on the basis of his then current income. Furthermore, this assumption was confirmed by the bills for services he received from the State, which nowhere indicated that these were only partial billings, or that if he paid these bills in full, he would continue to be subject to further liability. (Crisp Exhibit A, Document No. 7, Index to Record On Appeal; see also Testimony of Charles Roark, Record on Appeal, p. 53.)

Given the State's clear failure to ever attempt to educate the bankrupt or other patients in his situation as to the true extent of their liability, it is arguable that the State in fact has waived the remainder of its claim by its offer to accept only partial payment,

i.e. $1623.65. Both because of the State's grievous failure to inform the appellee of the amount and of the terms of his debt, and because of the State's misleading practices of billing, the State's claim surely fails to meet the most basic standards of equitable conduct.

Furthermore, the State itself certified that Crisp's debt to it amounted only to the billed sum of $1623.65. (State of Connecticut's Proof of Claim, Joint Appendix pp. 5-6.) The State subsequently asserts that its claim amounts to the total per capita cost of Crisp's care, i.e. $10,250.82. (Joint Appendix, p. 55). At the hearing in the District Court below, Judge Clarie commented upon the State's assertions that it was empowered to rebill former patients for amounts higher than the originally charged and paid bill during the following exchange:

> THE COURT: I'd be interested in the legality of this. By Curiosity, do you know of any instances where the State has billed a person for a particular amount, based on their ability to pay, and they paid it and they received a receipt for it, and then five or six or eight or ten years later, they have been rebilled for the difference?
>
> THE WITNESS [Mr. Roark of Finance and Control]: Even twenty years later, sir.
>
> THE COURT: Twenty years later?
>
> THE WITNESS: Yes.
>
> (Joint Appendix, p. 58)

This Court, sitting in equity, cannot permit the State to alter the term of its contract with Crisp in such an unconscionable manner.

IV. THE CONSTITUTIONAL REQUIREMENT OF UNIFORMITY IN BANKRUPTCY AND THE EQUITABLE PURPOSES OF BANKRUPTCY ARE INCOMPATIBLE WITH THE CLAIM OF THE STATE OF CONNECTICUT.

A. The Laws Of Bankruptcy Must Apply Uniformly To Similar Classes of Debtors.

Article 1 § 8 of the U.S. Constitution expressly provides that Congress shall make "uniform laws" on the subject of bankruptcy. (emphasis added). Congressional bankruptcy legislation may not be interpreted so as to make distinctions between similar classes of debtors on the basis of local law. Perez v. Campbell, 402 U.S. 637, ¶9 L.Ed. 2d 233, 91 §1704 (1971).

The State of Connecticut here argues that by virtue of C.G.S. §17-295, it should enjoy special creditor status in relation to those who have been patients in state-maintained hospitals. It has been held that while the uniformity requirement is not violated by distinguishing between classes of debtors, e.g. corporations and farmers, bankruptcy laws may not be construed in such a way as to discriminate between debtors of the same class. Thomas v. Woods, 173 F. 585 (8th Cir. 1909); Campbell v. Allegheny Corp., 75 F.2d 947 (1935); Perez v. Campbell, supra.

Few hospitals today are self-supporting; nearly all depend upon federal, state, and/or municipal funds. By the logic of the state's argument, hospital debts incurred by patients at municipal or federal-funded hospitals or at totally private facilities would be eligible for discharge in bankruptcy, but debts to state-maintained hospitals would not.[6] Furthermore, in those states where no statute analagous to C.G.S. §17-295 governs repayment of costs to state hospitals, state hospital debts would presumably remain

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[6]Indeed, Connecticut's psychiatric hospital system is itself dependent upon federal monetary assistance.

dischargeable. We can envision the consequences of upholding the State's claim: patients wealthy enough to afford private facilities, or patients eligible for federal hospital care would find their debts dischargeable, while the vast majority of psychiatric patients who recieve care in state or municipal hospitals would be barred from discharging their hospitalization debts. Such an outcome is incompatible with the uniformity requirement of the Constitution.[7]

Soaring medical costs in the last decade have made overwhelming hospitalization bills a major cause of personal bankruptcies.[8] The Commission on Bankruptcy Laws recently found it necessary to recommend that discharges be freed from the present six-year frequency requirement and be granted whenever the bankruptcy court "finds that 'the inability of the debtor to pay his debts is substantially the result of causes not reasonably within his control." Bankruptcy Commission Report, Part 1 1973 at 24, 186. That the need for in-patient psychiatric care is a circumstance beyond the reasonable control of a debtor should be by now indisputable.[9]

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7. Such an arrangement would also lack the underlying rationality requisite to withstand scrutiny under Equal Protection standards. Cf. Henry v. White, 359 F. Supp. 969 (D.Conn. 1973); Vaccarella v. Fusari,(D. Conn. Sept. 13, 1973, No. 15343); Jimenez v. Weinberger, 42 U.S.L.W. 49 at 4948 (6/18/74).

8. The Brookings Institution reports that medical expenses are the second most important cause underlying personal bankruptcies; a full 28% of their sample cited medical expenses as the major reason they became overwhelmed by debt. Stanley, D., and Girth, M., BANKRUPTCY: PROBLEM, PROCESS, REFORM. D.C.: Brookings Institution (1971), p. 47.

9. Professor Shuchman has observed that our bankruptcy laws make certain moral distinctions between classes of debts and debtors, such as the difference between an ordinary debt and one incurred by fraud. He goes on to suggest that discharges take into account the relative impact of the outstanding debt upon debtors and creditors, and recommends that claims in bankruptcy might best be examined in light of "(a) the moral aspects of the debt transaction or the underlying obligation, (b) the situation of the creditors by size and net worth, and (c) the situation of the bankrupt family." Shuchman, supra, at 474-475. By any ethical analysis, the appellant-State has an equitable claim in bankruptcy far inferior to that of the appellee-bankrupt.

B. Bankruptcy Courts Sit As Courts of Equity As Well As Of Law, And As Such, Can Disallow or Subordinate A Claim On Equitable Grounds.

The Bankruptcy Court, in passing upon the proof and allowance of claims, proceeds with appropriate regard for rights acquired under state law, but is not required to adopt local rules of law in determining what claims are provable." 9 Am. Jur. 2d §430, p.338. In determining the equities of a situation, the Bankruptcy Court is defining and applying federal law. Heiser v. Woodruff, 327 U.S. 726, 90 L. Ed. 970, 66 S.Ct. 853 (1946). See also Pepper v. Litton, 308 U.S. 295, 84 L. Ed. 281, 60 S.Ct. 238 (1939); Re Shinault Lumber Products, Inc., 323 F. Supp. 1041 (D.C.N.D. Miss. 1970), aff'd 440 F.2d 121(5th Cir. 1971).

In determining whether a debt is provable within the meaning of §63 of the Act, the rule to be followed is:

> possible doubts as to the meaning of the section [§63] should be resolved in the light of the purpose of the Act "to convert the assets of the bankrupt into cash for distribution among creditors and then to relieve the honest debtor from the weight of oppressive indebtedness.
>
> Maynard v. Elliot, 283 U.S. 273, 51 S.Ct. 390, 75 L.Ed. 1028 (1931)

Since the Bankruptcy Act of 1841, Congress and the courts have proceeded on the assumption that the bankrupt might be honest but unfortunate. "Although once considered a secondary purpose, the discharge of the debtor has come to be an object of no less concern that the distribution of his property,[10] especially in voluntary proceedings." 9 Am Jur. §3 p. 46. The question of whether a given debt is dischargeable is to be liberally construed in favor of the bankrupt. Davis v. Aetna, 293 U.S. 328, 55 S.Ct.

10. Cf. H.R. REP. No. 687, 89th Cong. 1st Sess. 2 (1965).

151, 79 L.Ed. 393 (1934); Neal v. Clark, 95 U.S. 704, 24 L. Ed. 586 (1878); Frederick v. Lines, 400 U.S. 18 (1970); 1A Collier on Bankruptcy, ¶17.09. Equitable considerations applied to the instant case compel a determination of dischargeability in favor the the appellee-bankrupt Crisp.

CONCLUSION

The courts below did not err in finding that a discharge in bankruptcy is a form of prospective relief and hence not barred by the Eleventh Amendment. The courts below properly held that the State of Connecticut may not construe its statutes so as to conflict with federal law; the appellant is barred by the Supremacy Clause from subverting the purposes of bankruptcy. The courts below properly held that the claim here in dispute is provable and dischargeable under §63 of the Bankruptcy Act.

As Judge Seidman remarked in his opinion below, "To declare the bankrupt's obligation to the State of Connecticut nondischargeable would do violence to one of the basic tenets of the Bankruptcy Act — the opportunity for rehabilitation." Memorandum and Order of August 15, 1974, at p. 11 (Joint Appendix p. 35).

For the foregoing reasons, the decision and judgment of the Bankruptcy Court, as upheld on review by the District Court, should be affirmed in all respects.

Respectfully Submitted,

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_____
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CERTIFICATION

This is to certify that a copy of the foregoing was mailed this 17th day of March, 1975, postage prepaid, to Edward Pasiecznik, Assistant Attorney General, 90 Brainard Road, Hartford, Connecticut.

Eliot J. Berenberg

ELIOT J. BERENBERG, ESQ.